

REMARKS

Claims 1-8 are presently pending. The Office Action mailed October 7, 2008 subjects Claims 1-8 to a restriction requirement. The Office Action suggests that the Application contains claims directed toward the following groups:

- I. Claim 1.
- II. Claims 2-5
- III. Claim 6.
- IV. Claims 7-8.

Provisional Election with Traverse

Applicant hereby elects the Claim of Group I with traverse. Applicant requests withdrawal or reconsideration of the restriction requirement for the reasons set forth below.

Request for Reconsideration of Restriction Requirement
(Traversal per 37 CFR 1.143)

Introduction

The Office Action suggests that the various subcombinations do not overlap in scope and are not obvious variants. If claimed inventions do not overlap in scope, i.e., they are mutually exclusive, then the restriction as presented is unwarranted.

However, mutually exclusive inventions are inventions such that a first invention would necessarily not infringe a second invention, and the second invention would necessarily not infringe the first invention (MPEP 806.05, ¶ 2, bottom). Hence for two

claims to be mutually exclusive, the invention of one claim must exclude the invention of the other claim such that one invention would necessarily not infringe the other.

General Arguments

As the present Application contains very few claims, all of which are classified in the same search class (Class 705). However, generally, when the classification is the same, and absent a clear indication of separate future classification, no reason exists for dividing among purportedly independent or related inventions (MPEP § 803 ¶2).

Applicant further maintains that search and examination of the application can conceivably be made without serious burden due to the relatively few claims present and that Claims 1-8 are similarly classified. Accordingly, as per MPEP § 803 ¶2, the Claims should be examined even if Examiner disagrees as to whether the inventions of Groups I-IV are patentably distinct.

Applicant further maintains that an invention drawn to any one of Claims 1-8 could conceivably include certain features of other claims, whereby the resulting invention would infringe any or all of the other claims. Accordingly, the Claims are not mutually exclusive, i.e., they overlap in scope and restriction is further improper. As forcefully stated in MPEP § 806.05 ¶1: "If they are not distinct, restriction is never proper." (Emphasis added.)

Restrictions Between Groups

The Office Action suggests that Groups I and II are distinct and do not overlap in scope. In particular, the Office Action suggests that the inventions of Groups I and II are related as subcombinations, where Group I has separate utility pertaining to use of a map generator, and Group II has separate utility using a weighing formula that does not require a map generator.

However, conceivably, an invention that would infringe Claim 1 could incorporate use of a weighing formula. Similarly, an invention that would infringe Claim 2 could conceivably include a map generator function. Accordingly, Claim 1 does not exclude

Claim 2, or vice versa, and the inventions are not mutually exclusive as required for the present restriction to stand.

Similar reasoning applies to all of the restrictions set forth in the above-identified Office Action, e.g., further restrictions pertaining to Groups I and III, I and IV, II and III, II and IV, and III and IV.

Request for Example

If Examiner maintains that the above-identified restriction requirement is proper, Applicants respectfully request an example detailing the appropriateness of the restriction requirement per MPEP 806.05(j):

"The burden is on the examiner to provide an example to support the determination that the inventions are distinct, but the example need not be documented. If applicant either proves or provides convincing evidence that the example suggested by the examiner is not workable, the burden is on the examiner to suggest another viable example or withdraw the restriction requirement."

(Emphasis added.)

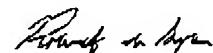
Conclusion

Group I, comprising Claim 1, was elected with traverse. Applicants respectfully request withdrawal of the restriction requirement, which is apparently based on assumption that the claimed inventions do not overlap in scope, i.e., are mutually exclusive. However, the claimed inventions do not exclude each other as set forth above. Furthermore, the relatively few similarly classified claims mitigate in favor of withdrawal of the restriction requirement.

The present Application is believed to be in proper form for allowance. Accordingly, allowance, and passage to issue are respectfully requested.

I hereby certify that this correspondence is being facsimile transmitted to the USPTO (571-273-8300) deposited with the United States Postal Service as first-class mail in an envelope addressed to the Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450 on April 7, 2009.

Respectfully submitted,



Robert de Sylva

(Inventor)

c/o Robert de Sylva
161 Ocean Park Blvd. #D
Santa Monica, CA 90405.
310-452-4579